IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4767 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JETHABHAI GANDABHAI RATHOD

Appearance:

1. Special Civil Application No. 4767 of 2004

MR HARDIK C RAWAL for Petitioner No. 1

MR MUKESH H RATHOD for Respondent No. 1

MR NIRDOSH H RATHOD for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 19/04/2004

ORAL JUDGEMENT

1. Rule. Mr.Rathod, learned Counsel for the respondent waives service of rule. With the consent of

the parties, the matter is taken up for final hearing today.

2. The short facts of the case are that the respondent was serving as a conductor with the petitioner. It is the case of the petitioner that earlier the respondent had committed misconduct for non-issuance of the tickets and in the year 1985 the respondent was reduced to the basic pay-scale as the conductor. In spite of the same, he did not improve his behaviour. On 8-5-1993, during checking it was found that certain passengers were not issued tickets and it is the defence of the respondent workman that the process for issuance of the tickets was going on. Ultimately, the departmental inquiry was initiated against the respondent and in the departmental inquiry it was found that the charges are proved. The disciplinary authority imposed the punishment of dismissal from service. The respondent raised the dispute under the Industrial Disputes Act, 1947 which ultimately came to be referred to the Labour Court for adjudication being Reference (LCB) No.324/1998. The Labour Court adjudicated the reference and found that the charges against the workman are not proved and the finding of the Inquiry Officer is perverse to the record and the Labour Court ultimately directed for reinstatement without backwages. The said award of the Labour Court is under challenge in this petition.

3. I have heard Mr.Raval, learned Counsel for the petitioner and Mr.Rathod, learned Counsel for the respondent.

4. Upon hearing the learned Counsel appearing for the petitioner as well as the respondent, it appears that the Labour Court, while considering the matter, has found that the finding is given by the Inquiry Officer in the inquiry report are without properly evaluating the statement made by the witnesses. The Labour Court further found that the process of issuance of the tickets was going on and, therefore, it cannot be believed that intentionally the tickets were not given to the passengers and misappropriation cannot be believed. The Labour Court ultimately has also considered that as per the workman, since there was rush of the passengers he could not remember the payment made by the passengers.

5. It appears that even if the Labour Court finds that the Inquiry Officer, while concluding the inquiry has not properly evaluated the statement made on record, then also it was for the Labour Court to evaluate itself

the statement made and to arrive at a conclusion. If the Labour Court having evaluated the said statement finds that ultimate conclusion of the Inquiry Officer can be maintained, then in that case, there would be no ground to finally conclude that the finding of the Inquiry Officer is perverse to the record. It appears that the aforesaid exercise is not undertaken by the Labour Court. the award passed by the Labour Court deserves interference.

6. In view of the aforesaid observations, I would have considered the matter for remanding the case to the Labour Court. However, Mr.Rathod, learned Counsel appearing for the respondent submitted that the workman is dismissed from service since 1998 and even if this Court finds that there is any fault on the part of the workman as the outcome of the material on record, the workman is ready to accept the penalty which may be imposed by this Court as just and reasonable.

7. Normally if there is clear material on record to show that the tickets are not issued after collecting the money and the same action, if has come on record, as intentional action, it would be a case of misappropriation and in case of misappropriate of money, the Corporation would be justified in imposing the punishment of dismissal from service. But in the present case, considering the facts and circumstances when the checking took place, it appears that the process of issuance of tickets was going on and the bus was full with 60 passengers and there was heavy rush and, therefore, even if it is believed that the amount of tickets were collected, but since the process of issuance of the tickets was going on, it cannot be said that the charge of misappropriation is made out. At the most, it may come to the net effect that the conductor failed to issue the tickets to the passengers after collecting the fare and when the process of issuance of tickets was going on the checking was made. Since there is no enough material to demonstrate that it was a case of misappropriate, in my view, the conclusion would be of negligence in discharging of the duty as the conductor.

8. Under these circumstances, if the matter is considered keeping in view the provisions of Section 11A of the I.D. Act, the appropriate punishment would be of withholding of five increments with future effect. I find it proper to leave the matter at that stage without observing further, since the learned Counsel, Mr.Rathod for workmen has agreed to accept the punishment of withholding of five increments with future effect. Since

this Court has found that the punishment of withholding five increments would be a reasonable punishment, even otherwise also, there would not be any question of backwages. Even the labour court has also not awarded any backwages. Mr.Rathod has also agreed that even if the petitioner Corporation assigns the duty other than that of conductor as per the experience of the workman, he would agree for any other duty in case this Court is inclined to order for reinstatement.

9. In view of the aforesaid discussion, the award passed by the Labour Court dated 11-11-2003 in Reference (LCB) No.324/1998 is modified to the effect that the petitioner is directed to reinstate the respondent in service by imposing punishment of withholding five increments with future effect. However, it is further clarified that it would be open to the petitioner to assign duty to the respondent workman other than that of conductor, considering the facts and circumstances of the case. Rule. is partly made absolute to the aforesaid extent.

Mr.Rathod submitted that the reinstatement may be effected within some reasonable time, so that the workman may start earning.

Considering the facts and circumstances of the case, the petitioner shall reinstate the respondent as per the judgement of this Court as early as possible, preferably within a period of one month from the date of receipt of the writ of this Court.

19-4-2004 (Jayant Patel, J.)

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